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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,241	01/31/2001	John C. Molander	8409	6142

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,241

Applicant(s)

MOLANDER ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 and 5 – 19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 5 – 10 and 16 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles et al. (US 5,899,895).

As to claim 1, Robles et al. (hereinafter "Robles") discloses a disposable article comprising a containment assembly having longitudinal edges and end edges and at least one elastomeric side panel carried by the containment assembly (Figure 3 members 15 and 16), and extending outwardly, the at least one elastomeric side panel including an inner region having at least one discontinuity for dividing a tensile force applied to the at least one side panel into a waist-directing force and a leg-directing force wherein the at least one discontinuity is surrounded by the inner region wherein the at least one elastomeric side panel further includes a waist region and leg region separated thereof by the at least one discontinuity, the waist region is configured to transmit the waist-directing form, and the leg region is configured to transmit the leg-directing force and wherein the waist region and leg region have an extensibility as set forth in col. 24, lines 28 – 46 and col. 26, lines 26 – 29.

The difference between Robles and claim 1 is the provision that the waist region has an extensibility varying from about 5g/mm to about 50 g/mm and the leg region has an extensibility varying from about 1 g/mm to about 30 g/mm,

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the waist and leg elasticity with specific parameters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 5, Robles discloses a disposable article wherein the waist region has a greater width than the leg region as set forth in col. 12, line 55 to col. 13, line 5.

As to claim 6, Robles discloses a disposable article wherein at least one discontinuity is defined by at least one cut line as set forth in col. 24, lines 28 – 46 and col. 26, lines 26 – 29.

As to claim 7, Robles discloses a disposable article wherein at least one cut line is rectilinear (i.e. the disclosure of a slit) as set forth in col. 24, lines 28 – 46.

As to claim 8, Robles discloses a disposable article wherein at least one cut line is disposed substantially parallel with a first lateral edge of the at least one elastomeric side panel as set forth in col. 24, lines 35 – 42.

As to claim 9, Robles discloses a disposable article wherein at least one discontinuity includes at least one opening as set forth in col. 24, lines 28 – 46 and col. 26, lines 26 – 29.

As to claim 10, Robles discloses a disposable article wherein at least one opening is defined by a substantially triangular open area or a substantially rectangular open area (i.e. the disclosure of a slit) or a substantially trapezoidal open area (i.e. the disclosure of an aperture as set forth in col. 24, lines 28 – 46 and col. 26, lines 26 – 29.

As to claims 16 and 17, Robles discloses a disposable article wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 0 to about 45° relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 10 to about 35° relative to the lateral centerline of the disposable article; wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 10 to about 150 relative to a lateral centerline of the

disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 20 to about 30 relative to the lateral centerline of the disposable article as set forth in col. 11, line 51 to col. 12, line 6.

With respect to claims 18 and 19, see the rejection of claim 1.

Claims 1 – 2, 6 – 7 and 9 – 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Heki et al. (US 5,906,008).

As to claim 1, Heki et al. (hereinafter "Heki") discloses a disposable article comprising a containment assembly (Figure 1) having a first longitudinal edge and a second longitudinal edge opposed thereof, a first end edge and a second end edge opposed thereto, the first and second longitudinal edges being configured to contact the legs of the wearer, and the first and the second end edges being structured and configured to contact the waist of the wearer; and at least one elastomeric side panel (6) carried by the containment assembly (Figure 1), and extending outwardly from the first longitudinal edge of the containment assembly adjacent the first end edge of the containment assembly, the at least one elastomeric side panel including an outer periphery and an inner region having at least one discontinuity (20) limited to the interior region for dividing a tensile force applied to the at least one side panel into a waist-directing force and a leg-directing force wherein the at least one discontinuity is bounded by the at least one elastomeric side panel [col. 10, lines 3 – 37 and in figure 1 (as shown below) and in figure 6] wherein the at least one elastomeric side panel further includes a waist region (top of article as shown in figure 1) and leg region (area

generally designated by reference characters "4" and "5" in figure 1) separated thereof by the at least one discontinuity (20), the waist region is configured to transmit the waist-directing form, and the leg region is configured to transmit the leg-directing force (col. 12, line 49 to col. 13, line 5) and wherein the waist region and leg region have an extensibility as set forth in Figure 1.

The difference between Heki and claim 1 is the provision that the waist region has an extensibility varying from about 5g/mm to about 50 g/mm and the leg region has an extensibility varying from about 1 g/mm to about 30 g/mm,

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the waist and leg elasticity with specific parameters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 6, Heki discloses a disposable article wherein at least one discontinuity is defined by at least one cut line as set forth in col. 10, lines 17 – 20.

With reference to claim 7, Heki discloses a disposable article wherein the at least one cut line is rectilinear as set forth in figure 6.

As to claim 9, Heki discloses a disposable article wherein at least one discontinuity includes at least one opening as set forth in col. 10, lines 17 – 20.

As to claim 10, Heki discloses a disposable article wherein at least one opening is defined by a substantially triangular open area or a substantially rectangular open area or a substantially trapezoidal open area as set forth in figure 6.

With reference to claim 11, Heki discloses a disposable article wherein the at least one discontinuity is defined by a plurality of cut lines as set forth in figure 6.

With respect to claim 12, Heki discloses a disposable article wherein the plurality of cut lines includes three spaced cut lines as set forth in figure 6.

The difference between Heki and claim 13 is the provision that the cut lines are configured in a specific arrangement.

Heki teaches an article with a plurality of cut lines as shown in figure 6.

It would have been obvious to one of ordinary skill in the art to arrange the cut lines as desired in order to produce the most effective product since it has been held that rearranging parts of an invention involves only routine skill in the art.

The difference between Heki and claim 14 is the provision that at least one cut line is curvilinear.

Heki teaches an article with a plurality of cut lines as shown in figure 6.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed curvilinear cut lines vs. the rectilinear cut lines taught by Heki is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

The difference between Heki and claim 15 is the provision that the cut lines are curvilinear.

Heki teaches an article with a plurality of cut lines disposed to define a substantially triangular array of spaced cut lines as shown in figure 6.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed curvilinear cut lines vs. the rectilinear cut lines taught by Heki is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Response to Arguments

Applicant's arguments filed December 22, 2005 have been fully considered but they are not persuasive.

Regarding the applicant's argument that Heki does not recognize the criticality of extensibility in the waist region and in the leg region, the examiner disagrees. Heki's invention is directed to the maintenance and regulation of tension in these areas to support and/or control extensibility as taught in col. 2, lines 35 – 54.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
Art Unit 3761